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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,496

09/06/2006

Roelof Marissen

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4191

23117 7590 06/08/2009
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EXAMINER

BOLES, SAMEH RAAFAT

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

06/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,496	Applicant(s) MARISSSEN ET AL.	
	Examiner SAMEH BOLES	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/20/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

According to the Amendment filed on 3/27/09, Claims 1-20 are pending and have been examined in this office action.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 7, and 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marissen et al. (EP. Pat. No. 1,444,960A1).

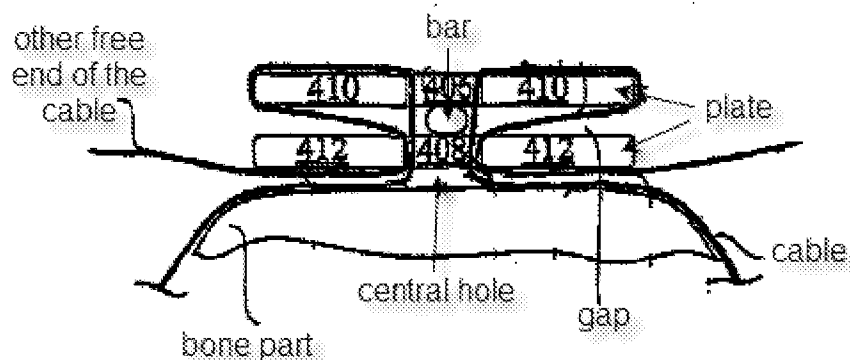
Marissen et al disclose a Fixing device (see Figure A below) comprising a surgical cable having a first and a second free end, and configured to be applied around bone parts to be fixed, and at least two fixing plates positioned in a stack for drawing the free ends of the cable to tension the cable around the bone parts to the tension required to fix the bone parts, leaving a gap between two adjacent plates, each fixing plate having a ring surrounding a central hole, the rings having an inner edge adjacent to the hole and an outer edge along a circumference of the fixing plate, wherein the holes in the stacked position at least partly overlap each other thus forming a central hole in the stack; a bar is inserted between the fixing plates before the cable is tensioned and removed after the cable has been tensioned, wherein at least one working end of the cable can follow a continuous trajectory starting from outside the stack running consecutively underneath the stack along the ring of the bottom plate from its outer

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edge to its inner edge, through the central hole along the inner edge of the rings of the plates to a position above and outside the stack, over the ring of the top plate from its inner edge to its outer edge, along the outer edges of the rings of the plates, to a position, at the level of the gap between the plates (Fig. 4), or below the stack, and then the cable runs through the corresponding gap from the inner edge to the outer edge of the rings adjacent to that gap bringing the free end from the central hole to outside the stack (Fig. 1); the other free end of the cable also can follow the same trajectory; the other free end can be fixed to a tensioning device that is connected to the fixing plates (Figs. 5 and 6).

Marissen et al disclose the claimed invention except that the Fixing device comprising at least three fixing plates positioned in a stack.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the Fixing device of Marissen et al to have at least three fixing plates positioned in a stack instead of two fixing plates, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.



3. Claims 8, 9, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marissen et al. (EP. Pat. No. 1,444,960A1) in view of Peterson (US. Pat. NO. 7,033,379 B2).

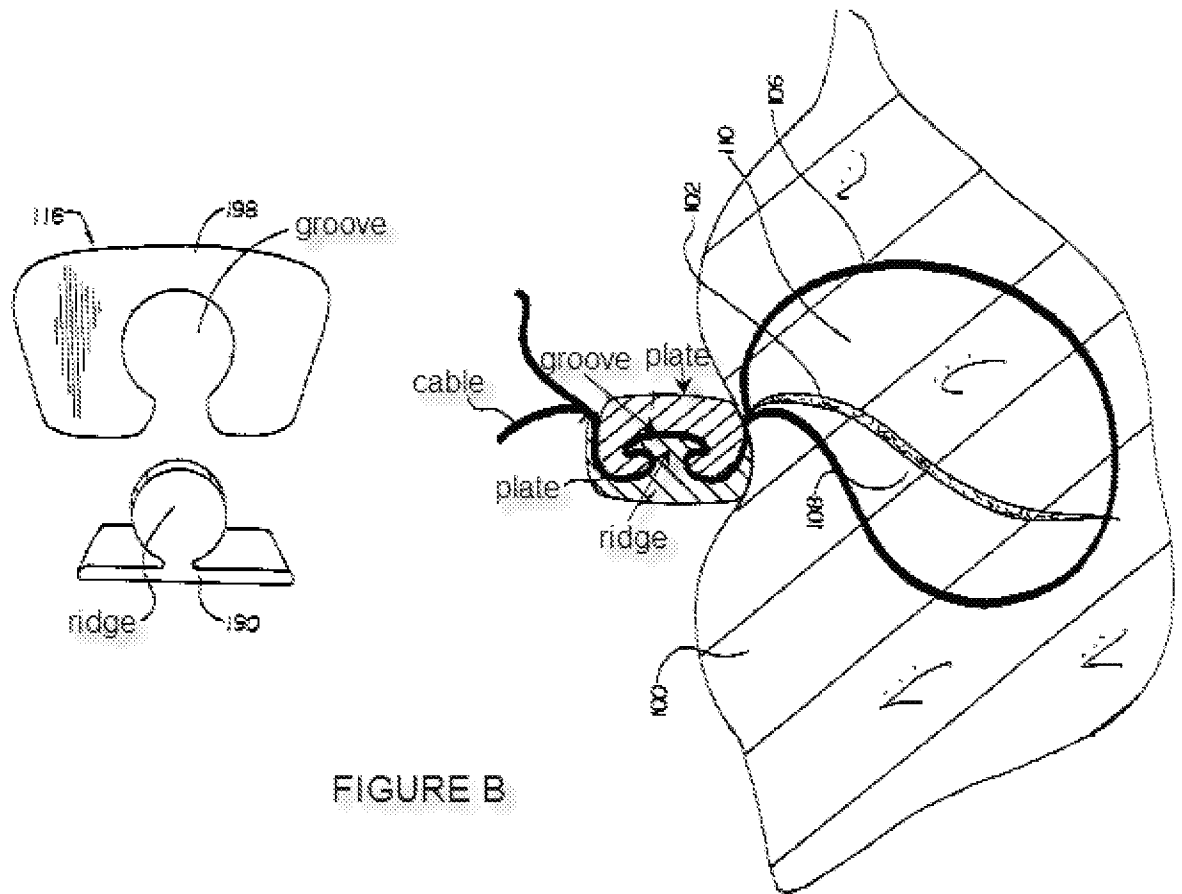
Marissen et al disclose the claimed invention except that in the surface of the ring of one or more of the plates, a continuous groove is being present running between the outer edge and the inner edge of said ring and in the surface of the ring of the other plate a ridge being present matching with said groove.

Peterson discloses a fixing device (see Figure B below) comprising of two fixing plate, wherein in the surface of one plate, a groove is being present and in the surface of the other plate a ridge being present matching with said groove such that in a stacked position of the two plates, the ridge fits in the groove.

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify one or more of the rings of the plates of Marissen et al with a groove and a matching ridge on the other opposite plate in view of Peterson

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such that in a stacked position of the plates, the ridge fits in the groove for providing an effective stacking position between the plates and for effectively tension the cable.



Response to Arguments

Applicant's arguments filed 3/27/09, with respect to the rejection(s) of claim(s) 1-20 under Marrissen et al '958 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Marissen et al. (EP. Pat. No. 1,444,960A1).

Applicants requested withdrawal of the rejections of record based on the Marrissen et al '958 publication, because that such rejections are inappropriate for the following reasons: the Marrissen et al '958 publication and the present application are owned by the same Assignee, namely DSM IP Assets BV ("DSM"); and the Marrissen et al publication qualifies as "prior art" only under 35 USC §102(e). Therefore, Marrissen et al is statutorily disqualified as a reference against the subject application under 35 USC §103(c).

Marissen et al. (EP1,444,960) and the present application have different inventors; and the Marissen et al. (EP 1,444,960) was filed on 07/02/03 and published in the English language on 11/08/04; but the present application is entitled to the filing date of January 27, 2005 and a publishing date of August 15, 2005 accorded to the International Application of PCT/EP2005/000935.

Thus, the Marissen et al. (EP 1,444,960) qualifies as "prior art" under 35 USC §102(a), and therefore, is not disqualified as prior art under 35 U.S.C. 103(c).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMEH BOLES whose telephone number is (571)270-5537. The examiner can normally be reached on Monday through Friday 7:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571)272-4746. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SAMEH BOLES/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775